

OFFICE OF THE MONITOR

NUNEZ, ET AL. V. CITY OF NEW YORK, ET AL.

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October 02, 2020

VIA ECF

The Honorable Laura T. Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10006

MEMO ENDORSED

Re: Nunez, et al. v. City of New York, et al., 11-cv-5845 (LTS) (JCF)

Dear Judge Swain,

We write to provide an update on the Parties' efforts to determine the next steps regarding the applicability, if any, of the *Nunez* requirements to 16- and 17-year-old Adolescent Offenders ("AO Youth") housed in Horizon, given that DOC is no longer involved in the day to day management of this age group and their legal status has changed.¹ For the reasons discussed below, the Parties and the Monitoring Team jointly request a telephonic conference, following the filing of the Tenth Monitor's Report,² with the Court as we believe this may help facilitate

¹ The Monitoring Team has filed five status letters with the Court regarding this issue (*see* dkts. 343, 345, 352, 353, and 355).

² The Monitor has requested the Court grant an extension to file the Monitor's Report to October 23, 2020 (dkt. 356).

resolution of this matter.

- Background

On April 10, 2017, the State of New York passed legislation (known as the “Raise the Age Law”) that raised the age of criminal responsibility to 18 years of age and created a new category of offenders called “Adolescent Offenders,” which are defined as 16- or 17-year-olds who are charged with a felony-level offense, *see* Criminal Procedure Law 1.20 (44). The Raise the Age Law was implemented in stages. The new category of offenders applied to any 16-year-old youth charged on or after October 1, 2018, and any 17-year-old youth charged on or after October 1, 2019. All 16- and 17-year-old youth charged before October 1, 2018, and any 17-year-old youth charged between October 1, 2018 and September 30, 2019, were to still be processed as adults (collectively, “Pre-Raise the Age Youth”). Pursuant to the Raise the Age Law, all 16- and 17-year-old incarcerated youth were required to be housed in a facility not located on Rikers Island as of October 1, 2018.

Beginning in October 2018, all Pre-Raise the Age Youth were housed at the Horizon Juvenile Center (“Horizon”), a specialized secure juvenile detention facility located in the Bronx, New York, which was jointly operated by DOC and the New York City Administration for Children’s Services (“ACS”). The Monitor has assessed compliance with the City, DOC, and ACS’ efforts to comply with the Consent Judgment requirements regarding the management of the Pre-Raise the Age Youth at HOJC beginning in October 2018 and those findings are outlined

in the Seventh to Ninth Monitor's Report.³ The forthcoming Tenth Monitor's Report will include the final period of assessment of compliance for this group.

Horizon has also been used to house AO Youth during the last several months, but AO Youth were housed in separate units from Pre-Raise The Age Youth. The City reports that DOC staff were not allowed to have any direct supervision or contact with the AO Youth. As of July 26, 2020, there were no longer any Pre-Raise the Age Youth housed at Horizon, but the facility continues to house Adolescent Offenders. ACS currently exclusively operates Horizon, and DOC no longer has any role in the day-to-day management of the facility or supervision of the youth housed in the facility. Accordingly, unless or until an agreement is reached regarding the ongoing monitoring of Adolescent Offenders, the Monitoring Team has ceased monitoring activities at Horizon Juvenile Center ("HOJC").

- Ongoing Discussions

The Monitoring Team has worked with the City, ACS leadership, Plaintiffs Counsel and Counsel for the United States to facilitate an agreement to resolve their dispute concerning the extent, if any, to which certain provisions of the Consent Judgment apply to Adolescent Offenders housed at Horizon going forward. The Parties, with input from the Monitoring Team, have exchanged draft proposals for a possible resolution of this dispute which address the role of the Monitoring Team and Court going forward. The Parties and the Monitoring Team have also had extensive discussions with one another. Although the Parties have made some progress, despite the best efforts of all involved, the United States, the Plaintiff Class, and the City have

³ See Seventh Monitor's Report at pgs. 192 to 207, Eighth Monitor's Report at pgs. 218 to 249, and Ninth Monitor's Report at pgs. 251 to 280.

not reached an agreement, particularly with respect to the issue of the Court's jurisdiction or role moving forward. The Monitoring Team and the Parties believe that a joint telephonic conference with the Court, following the filing of the Tenth Monitor's Report -- which will include a section reflecting the Monitor's current assessment of HOJC operations and ACS' management of youth housed there -- would be useful to facilitate a resolution of the dispute.

Sincerely,

s/ Anna E. Friedberg

Steve J. Martin, *Monitor*

Anna E. Friedberg, *Deputy Monitor*

Christina B. Vanderveer, *Associate Deputy Monitor*

The Court will conduct a telephonic conference on November 2, 2020, at 2:30 p.m. DE#357 resolved.
SO ORDERED.

10/5/2020

/s/ Laura Taylor Swain, USDJ